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Second Party :
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Stamp Duty Amount(Rs.) : 500
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Before the Sole Arbitrator

In the matter of Arbitration under Master Circular for Online
Resolution of Disputes in the Indian Securities Market

Matter No : NSE-SB-2024-08-412645
CORD Case Id : SNSEI1024A0328 of 2024

Statutory Alert:

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Between

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Applicant (TM)

And

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PAN number of [REDACTED] : [REDACTED]

RESPONDENT
(On behalf of Constituent)

CORD (Centre for Online Resolution of Dispute) is an independent institution facilitating and administering electronic Alternative Dispute Resolutions via its online platform <https://platform.resolveoncord.com>, also referred to as Online Dispute Resolution (“ ODR “) Institution, having its registered office at Bangalore.

CORD has been empaneled by the National Stock Exchange in accordance with SEBI Master Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated August 11,2023 (“ **SEBI Circular** “) as may be amended / modified from time to time, for undertaking time-bound online Conciliation and online Arbitration.

The above-mentioned matter was referred to CORD via SMARTODR.IN (“ODR Portal”), a common Portal established by the Market Infrastructure Institutions (“ MII ”) in accordance with the SEBI Circular, for harnessing online Conciliation and online Arbitration for resolution of disputes arising in the Indian Securities Market. Further, the parties have accepted the terms and conditions of ODR Portal.

[REDACTED]

The undersigned has been appointed as Sole Arbitrator on 03.01.2025 by CORD, in the present matter.

In the matter no. NSE-SB-2024-08-412645, the hearing was held on January 16, 2025, at 4 p.m. through the CORD portal via videoconferencing.

FACTS OF THE CASE:

The Respondent's father-in-law has had a Trading Account with the Applicant's Jammu branch since 2007. While filing his income tax returns for the Assessment Year 2023-2024, on 30.5.2023, it had come to his notice through the Annual Information Statement available on the IT portal that 6125 shares of NHPC had been transferred as Gift / Donation to one [REDACTED] having PAN [REDACTED] on 8.6.2022. This came as a rude shock to him as no such transaction had ever been executed by him nor he know this person.

(The Complaint in the ODR portal has been filed by [REDACTED], on behalf of his father-in-law, who is a senior citizen. The matter was referred to Conciliation, and aggrieved by the order of the Ld. Conciliator, the Respondent (Trading Member) had file this Arbitration Application.

The Respondent in this matter is [REDACTED], acting on behalf of his father-in-law [REDACTED] (Constituent).

So wherever the word Respondent appears in this Award, it may be construed as referring to the actions of / relating to [REDACTED])

The Respondent filed a Complaint with the Jammu branch of the Applicant.

The Respondent also filed SEBI SCORES complaint on 22.7.2024.

After the closure of the SEBI SCORE procedure, the Respondent filed a complaint on ODR for Conciliation.

(The Respondent in this Arbitration matter was the Complainant, and the Applicant in this Arbitration matter was the Respondent, in reference for Conciliation)

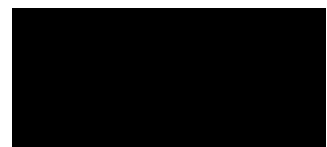
As against the Applicant's initial offer of Rs.2,65,825.00 and final offer of Rs.3,07,944.00, the Respondent, who declined both offers, demanded the restoration of the 6125 shares of NHPC or Rs.5,10,825.00 which was average of 52 weeks highest and lowest price.

The demand of the Respondent was not accepted by the Applicant.

The Ld. Conciliator by his Order dated September 02, 2024, directed the Applicant to credit Rs.5,10,825/-@ 83.40 per share for 6125 shares, to the account of the Complainant, within five working days of the orders.

Aggrieved by the Order of the Ld. Conciliator the Applicant has filed this Arbitration Application.

Previous adjudication/s:



The matter was referred for Conciliation.

The Applicant was the Constituent and the Respondent was the Trading Member. The Conciliation meetings were held on August 27, 2024, at 11.30 A.M. and on August 28, 2024, at 4 p.m.

At the meeting held on August 28, 2024, the Respondent conveyed their consent to settle the matter amicably and offered a closing price of share as on 08-06-2022 @ 43.40 which comes to Rs.2,65,825.00. The Complainant declined to accept this.

The Respondent made a final offer at Rs.3,07,944/- which was at closing rate as pm 30.5.2023, and this offer was also declined by the Complainant.

The Complainant demanded refund of NHPC shares of 6125 or Rs.5,10,825.00 which was an average of 52 weeks highest and lowest. The demand of the Complainant was not accepted by the Respondent.

The learned Conciliator, as per his Order dated September 02, 2024, declared that the Conciliation was unsuccessful.

The decision of the Ld. Conciliator, was as under :

- i. Admitted as fraudulent transaction.
- ii. The Respondent to credit Rs.5,10,825 @ 83.40 (Rupees Five lakhs ten thousand six hundred twenty five) only to account of Respondent (should have been Applicant) within five working days from the date of the orders.
- iii. The Respondent if feels aggrieved can approach Arbitration or any other appropriate forum to address their grievances as per law.
- iv. Admissible Claim Value/ Directions by the Conciliator (in case of service -related complaint) - Nil.

The Applicant has submitted the following documents :

1. Statement of Claim dated 18/12/2024.
2. Account opening form / KYC documents
3. (Profile) Change Request Form.
4. Conciliation Report dated September 02, 2024.
5. SMS Log dated 6.6.2022.

Applicant's submissions in the Statement of Claim.

The Applicant has stated that the Respondent has opened the Trading and Demat account with the Applicant by executing necessary documents including the Account opening form, on 20/12/2027 and had also submitted requisite documents / details. The Applicant has allotted unique client code as [REDACTED]

The Respondent had filed complaint on SEBI Score in regard to fraudulent change of Email / Mobile Number and transfer of quantity of 6125 shares of NHPC.

Applicant had given specific response on the complaint with relevant documents such as submitted Profile Change Request and SMS Log.

Applicant had received Profile Change Request on 06.06.2022. Applicant had sent confirmation SMS to Respondent on 06.06.2022 at 14.44 p.m. in regard to receipt of Profile Change Request on Respondent's registered Mobile No.9419640785. The content of the SMS was " We've registered your request for Endorsement-Email / Mobile updation. Your request number is CAS-8871-1598-B1R6G4. Please quote this request number for any future correspondence in this regard. Login to your account from our all new website reliancesmartmoney .com"

Respondent had requested for changing the email ID and mobile number by Profile Change Request from [REDACTED] and [REDACTED] to new updation as [REDACTED] and [REDACTED] respectively.

After updation of requested Mobile Number and Email Id on 08.06.2022 the shares of NHPC had been transferred to other demat account through Easiest Mode and there were no intervention from the Applicant as it was Online transaction by using online credential by Respondent.

Respondent had filed SEBI Score complaint in regards to fraudulently transfer of shares on 22.07.2024 and Applicant had submitted reply and clarification accordingly. After closure of SEBI Score procedure , Respondent filed complaint on ODR for Conciliation meeting. The following clarification has been taken before Conciliator by Applicant.

Applicant had received the Profile Change Request form for change of Mobile Number and Email Id.

The Applicant had immediately informed to client via SMS on 06.06.2022 in regard to receipt of the Profile Change Request form.

In reply Respondent denied as he did not submit any Profile Change Request form to Applicant's office and Respondent has admitted before the conciliator that registered mobile number was not in operation from long time.

Further, Respondent has admitted that he has known about the transfer of shares for the first time in 2023 at the time of Income tax filing.

Both the acceptance of the client has not been considered by Conciliator who has considered the rate of shares @ Rs.83.40 without mentioned specific reason and stand for it.

Applicant is aggrieved by the order of ODR Conciliation meeting that gave direction to pay Rs.5,10,825/- and file this Arbitration Application before Hon'ble Arbitral Tribunal through CORD ODR platform. The copy of the aforesaid Conciliation Order has been annexed to the Statement of Case, by the Applicant.

Grounds of Arbitration Application against Conciliation order.

The Applicant has mentioned the following as grounds for the Arbitration Application :

“ i. Non-consideration of confirmation SMS and Email sent to client – The Hon’ble Conciliation forum has not considered the content of confirmation SMS that provided on registered mobile Number [REDACTED] as “ Dear Customer, We’ve registered your request for Endorsement Email/ Mobile Updation. Your request number is CAS-8871598-B1R6G4. Please quote this request number for any future correspondence in this regard. Login to your account from our all new website reliancesmartmoney.com”.

If Respondent check this SMS and inform to Applicant about the status of Profile Change Request than Applicant could do something to avoid executed this request. This fact ignored by the Hon’ble Conciliation forum. The copy of the aforesaid SMS are annexed herewith as “ Annexure-D”

ii. Non-consideration of acceptance of complainant in regard to Non-operation status of registered mobile Number – Another big aspect ignored by the Hon’ble Conciliation forum that Respondent had admitted about the non operation of registered mobile Number [REDACTED] since 2010. This lapse by Respondent must be considered by Hon’ble Conciliation forum, As per Client Broker Agreement signed by Respondent specifically mentioned as “ **The client agrees to immediately notify the stock Broker in writing if there is any change in the information in the ‘ client registration form “ provided by the client to the stock broker at the time of opening of the account or at any time thereafter”**. This is general practice followed by all prudent person but in this case Respondent ignore this for more than Ten years of time period.

iii. Opinion on Signature mismatch is not in purview of conciliator –

The finding of Hon’ble Conciliation forum on signature mismatch is clearly beyond the purview of this forum. The conciliation finding is biased on the base of Hon’ble Conciliation forum finding on signature mismatch.

iv Non consideration of the fact that this appears to be a private arrangement between the Ex-employee and complainant – The ignorance of SMS that delivered in 2022 and not filed any complaint in 2023 as confirmed by the Respondent that he notice about the status of shares at the time of filing income tax. Both the incident to be appeared as private arrangement between Ex-Employee and complainant.

v Ex-Employee did this act in private capacity and beyond the control of the Applicant-

Hon’ble Conciliation forum has not considered that all the execution was executed under the private capacity of ex-employee and Applicant had followed all the necessary step to prevent such type of act but due to ignorance of Respondent to update mobile number detail and SMS this execution was beyond the control of the Applicant.

Applicant is very vigilant in respect to client’s complaints, Applicant had received same type of complaint from Jammu police and case file before Jammu Civil Court against [REDACTED], after notice that Applicant immediately suspend him from their job on 03.01.2023. But in this Respondent had not updated record of Applicant

in regard to status of registered Mobile number to Applicant and not raised complaint immediately when he came to know in May 2023.

vi **Non-Consideration of amicable settlement offered twice by Applicant –**
Applicant had

calculated to settlement amount on the basis of solid reasoning first one was offered on the basis of closing price of share NHPC on 08.06.2022 @ 43.40 which comes to Rs.2,65,825. The reasoning behind it Respondent's own admission in regard to status of registered mobile number was not in operation since 2010. That denied by the Respondent.

Second offer was given by Applicant to Respondent on the basis of closing price on 30.5.2023 of NHPC shares which comes to Rs.3,07,944/-. The reasoning before that offer is Applicant's admission that he came to know about the transfer of shares at the time of filing income tax in 2023 and raised complaint in 2024. That denied by the Respondent.

Hon'ble Conciliation forum had not accepted both that offer and reasoning and gave order on the base of average of 52 week High and Low of NHPC shares 6125 Quantity, which comes to Rs.5,10,825/-.

The order of Hon'ble Conciliation forum is only based on the findings and conclusions of the Respondent but did not consider the facts of the case presented by Applicant that clearly ignored by the Hon'ble Conciliation forum.

Prayer :

In the view of facts, Rules and regulation , aforementioned submission, the Applicants prays that this Hon'ble Tribunal may please to :

1. The Conciliation Proceeding order dated 27/08/2024 passed by the Hon'ble Conciliator in Matter No. NSE-SB-2024-08-412645 to be set aside and quashed only for the reason aforementioned.
2. Dismiss Admissible claim amount mentioned in IGRP order dated 27/08/2024 of Rs.5,10,825/- (Five Lac TenThousand Eight Hundred Twenty Five).
3. Any other relief as this Hon'ble Tribunal may deem fit and proper.”

Submissions by the Respondent.

The Respondent has submitted the following documents:

- i. Statement of Case.
- ii. Copy of Annual Information Statement of the Income Tax Department for [REDACTED] for Assessment year 2023-2024.
- iii. Copy of the Signature on Account Opening Form.
- iv. Copy of complaint letter (undated) of the Respondent, addressed to Reliance Securities Ltd. [REDACTED]

v. Copy of Form of Reliance Securities Ltd containing Basic Details of Client , DP Details, Bank Details , Brokerage details, and other details.

vi. Copy of signature on (Profile) Change Request Form .

██████████, son-in-law of the Respondent, who had submitted the Complaint in the ODR portal, has submitted the Statement of Case.

“ On Behalf of ██████████ Father-in-law) who is having account with Reliance Securities Ltd with basic client details as :

Client Code – ██████████

Bo Id ██████████

Statement of Case of the Respondent.

Quote :

1. My father-in-law is having the aforesaid account with Reliance Securities Ltd, Jammu Branch. While filing his Income Tax Return for the AY 2023-24 on 30.5.2023. It has come to his notice through Annual Information Statement available on IT portal that 6125 shares of NHPC had been transferred as Gift/ Donation to one ██████████ having PAN ██████████ on 08.06.2022. This has come as a rude shock to him as no such transaction had ever been executed by him nor he knows this person.

2. Reason for the delay in complaint to Reliance Securities Ltd.

Initially, my father-in-law thought his 6125 shares of NHPC resided with **Karvy Stock Broker Limited** as he has an **Acknowledgment slip for bidder** of NHPC shares having Karvy Stock Broker Ltd. stamp on it. Karvy Stock Broker had been banned by SEBI on 2023. He tried to find out his shares with them but couldn't. It was only in June, 2024 while visiting Reliance Securities Ltd Jammu Branch for enquiring about his shares of J&K Bank that are with them, he came to know that his shares of NHPC were transferred from this account only. In addition to this his mobile no, Email Id had also been changed without his authorization. Also, his account is deemed Inactive. Thereafter, he filled the Mobile, E-mail & address updation form along with KYC form which is not updated by the applicant till date. He had also raised a complaint & email to them regarding the transaction on **30th June 2024**. Subsequently he complained at ██████████ platform of SEBI.

3. Grounds of his claim of 6125 shares of NHPC to be credited to his demat account with the applicant .

a) No Profile change Request by him.

No profile change request form was submitted by him on **06.06.2022** & his profile was updated without his prior authorization.

b) ██████████ was Manager at Reliance Securities Ltd. Jammu Branch

At the time of this Fraudulent transaction made by [REDACTED]. He was manager at applicant's Jammu Branch as claimed by them. He made use of his position & internal links with Reliance Securities to execute the transaction.

c) Non consideration of Signature & Email Mismatch

One can clearly see the signature in the profile change request form that applicant received on **06.06.2022** is not matching with the signature on account opening form. Thus, the form should be rejected out rightly. Even the conciliator, [REDACTED] has no doubt that the signature is not matching. In addition to this the existing Email filled in the form is incorrect which should be the other reason for the disapproval of the form.

d) The Hastiness shown by Reliance Securities on the approval of profile change request form.

The applicant received the form on **06.06.2022**. [REDACTED] made the transaction on 08.06.2022. It took only one day to Reliance to update the profile despite of signature mismatch & incorrect Email Id. While in our case we received the call from them about profile updation after one month & that too with no result.

e) My father-in-law had provided two numbers. They could have called on the secondary No [REDACTED] provided to them. Moreover why only SMS was sent to the primary No. which was not in operation as per my father-in-law. He discontinued to use this number since **2010**. Why didn't the applicant validate the profile update request via call.

f) Non-consideration by the applicant of the fact that their client is a senior citizen & the applicant should have communicated regularly with the client.

Considering his age & the fact that he is not a tech-savvy person. The applicant must have ensured to give client relevant & timely information on their rights, duties which they didn't.

g) The Transaction Raises doubts about on the involvement of the applicant in the Fraud.

The fact that the profile is updated despite signature mismatch & incorrect existing email id in the form. Also the hastiness shown in the form approval raises doubts on the credibility of the applicant & their involvement in the case.

Appeal.

The fact is that if the applicant was vigilant enough no such transaction would had taken place. The profile updation form was approved despite the signature mismatch raises questions on the applicant's credibility in protecting the rights of the client. The respondent appeals & prays to the Hon'ble Tribunal may please to .

1) The conciliation proceeding order dated **27/08/2024** passed by the Hon'ble conciliation

In the matter no. **NSE-SB-2024-08-412645** to stay as it is.

2) Any other relief such as the dividend of Rs.4.25 per equity share of NHPC declared after 08.06.2022 be compensated by the applicant as the Hon'ble Tribunal may deem fit & proper is welcomed. “

The hearing was held on January 16th, 2025 at 4.00 p.m.

The hearing in this case was held on Thursday 16th January 2025, at 4.00 p.m.

The Applicant was represented by [REDACTED], Deputy Manager, Legal, and the Respondent was represented by [REDACTED].

Submissions by the Applicant's representative.

The Applicant's representative reiterated the submissions made by them in their Statement of Case.

He said if the Respondent had been informed about the fact of his primary mobile number not being operational for a long time, the matter would have come to light when the SMS acknowledgement for the profile change request was sent .

Even though the Respondent came to know, in May 2023 about the transfer of the NHPC shares to [REDACTED], he lodged the complaint with the Applicant only in June 2024.

The transaction had been put through by the Respondent through his system using the Easiest feature offered by the Applicant , using his login id and password,, and there is no intervention from the Respondent's end.

He reiterated that this transaction was done as a private arrangement between the Respondent and [REDACTED], who was an employee of the Applicant.

[REDACTED] had done this in his private capacity.

The Applicant's representative said to amicably resolve the matter, they had come forward to compensate the Respondent and had offered two options :

i. To pay Rs.2,65,825 /- for 6125 NHPC shares at Rs.43.40 per share, which was the closing rate for the shares on 08/06/2022 (which was the date on which the shares had been transferred to [REDACTED] account)

This offer was rejected by the Respondent.

ii. To pay Rs.3,07,944/- calculated on the basis of closing price of 6125 NHPC shares on 30.5.2023 (which was the date on which the Respondent says he came ot know of the transfer of the shares, from the Annual Information Statement of Income Tax Department for the Assessment Year 2023-2024.

This offer was also rejected by the Respondent,

The Respondent had claimed refund of the shares or compensation at the average of 52 week highest and lowest rates which worked out to Rs.5,10,825

The client's account was opened in 2007. As per the Respondent's contention, in 2022, shares of NHPC were transferred from his account. The Applicant had received Profile Change Request on 6th June 2022 and SMS was sent immediately on their registered mobile number 9419640785 . The SMS was very clear that they had received the Profile Change Request and giving the Request number for further communications. On 8th June 2022, NHPC shares were transferred through EASIEST mode. In EASIEST mode there is no intervention by the Trading Member. .When asked to clarify regarding EASIEST mode, the Applicant's representative said like NEFT in banks, CDSL has given this facility to the clients. The client uses his own Login Id and password and transfers shares to other accounts as per his desire.

When asked whether there is any evidence for these transactions , in the form of Contract Note or any other document, the Applicant's representative initially said there is no such document.

When asked whether the client should not be given some document trail evidencing the transaction and the trading member also will be having it, the Applicant's representative reiterated that it is done through Login id , and there will not be any document , like in the case of NEFT transactions in banks.

It was pointed out that apart from the client's system (computer) the transaction will also be reflected in the Trading Member's system. Apart from transactions for gift of shares, for sale or purchase a Contract Note will have to be issued. The Applicant's representative was reiterating that all the intimations are given to the client in their registered mobile number.

It was again pointed out that , while intimations had been sent for receipt of the Profile Change Request, for this transaction there should be some document, similar to contract note for sale or purchase, evidencing the transfer of the shares. The Applicant's representative was asked whether he could upload this document on the portal. Even when asked whether they were not sending contract notes, he said they were sending intimations to the updated mobile number and email.

The client's account was opened in the year 2007. By client's own admission , from the year 2010, the registered mobile number was not in use. From 2010 till 2024, there was no intimation about the non – operation of the registered mobile number. It is the duty of the client to give intimation about the non-operation of the registered mobile number. They had provided SMS as per contact details available with them.

When asked whether Profile Change was required for executing the transaction for transfer of the shares, the Applicant's representative said it is required – when request for transfer is generated in EASIEST ,OTP is sent to registered mobile number. In this case, OTP was sent to the updated mobile number . So for executing the transaction, registered mobile number and OTP is required.

The Conciliator had considered the claim on the basis of average of 52 week high and low rates.

The Conciliator has not considered the knowledge of the complainant (in 2023) in regard to transfer of the shares.

First of all, the Applicant has provided the SMS in 2022 and the complainant (Respondent) had knowledge of the transfer in 2023. However, he complained only in 2024. Both the dates were not considered by the Conciliator in deciding the price of shares for paying the compensation.

Therefore the Applicant is aggrieved with the claim amount of Rs.5,10,825 /- ordered by the Conciliator.

Firstly, the Respondent had not informed about the registered mobile number not being operational, when the transfer of shares took place on 08.06.2022.

Secondly , in 2023, at the time of filing the Income-tax returns, the Respondent has come to know about this transaction.

However, in 2023, he has not filed any complaint. He has come before this forum in 2024. So calculation on the basis of 52 week high and low is not justifiable.

The Conciliator has not considered Respondent's own admission of non -operation of mobile number. The Conciliator's conclusion on the basis of signature is not in the purview of the Conciliator.

When asked whether he has any legal authority to substantiate his statement that comparison of signatures is not within the purview of the Conciliator, the Applicant's representative only replied that the Conciliator does not have any power to justify on the basis of signature.. He has to give opinion only on the basis of financial transactions.

To amicably resolve the matter, they had made two offers – the first on the basis of price of the shares on 8.6.2022 and the second on the basis of the price of shares on 31.5.2023 on Respondent's admission that they came to know of the transfer of shares at the time of income-tax filing.

Both the offers had not been considered by the Conciliator and he has given his decision on the basis of 52 weeks' average of high and low.

Our offers to resolve has not been accepted by the Conciliator.

The Conciliator has not considered the following facts , and he has awarded Rs.5,10,825/-:

- a. Non-operation of the registered mobile number was not informed to the Trading Member,
- b. The transaction through EASIEST mode is without intervention by the Trading Member, executed by the client using own credentials and our offer to resolve the matter by offering the rate on 8.6.22 and on 31.5.2023 when the Respondent states they came to know of the transfer of shares..

When the Applicant's representative was asked whether they are still open to resolving the matter on the basis of rate of the shares as on 8.6.2022 or as on 31.5.2023 or they would leave the matter to be decided by the Arbitral Tribunal, the Applicant's representative said their offer still stands.

If the fact of the registered mobile number not being operational has been intimated to the Trading Member earlier, this problem would not have arisen.

The Applicant's representative submitted that the decision of the Conciliator , to pay Rs.5,10,825/- to the Respondent may be set aside.

The Applicant's representative was directed to upload the document evidencing the transfer of the NHPC shares from this demat account to the other demat account by Monday 20th January 2025.

The Applicant uploaded the Transaction Statement for the period 1 January 2020 to 24th July 2024 for the Demat Account, which shows the debit of 6125 shares of NHPC on 8.6.2022 , and closing balance of 1000 shares of Jammu Kashmir Bank Ltd.

The Applicant's representative's attention was drawn to their statement that the transaction of transfer of the shares was a private arrangement between the Respondent and their Ex- employee, and the statement that the Ex-Employee did this act in private capacity and beyond the control of the Applicant.

He was asked what was the assumption behind these statements.

The Applicant's representative replied that the Respondent knew about the transaction in 2023 but had complained about it only in 2024.

This transaction executed through EASIEST mode without intervention from the Trading Member and was beyond the control of the Trading Member.

If someone logs in to the client's demat account and trading account using the log in id and password, and executes the transaction through EASIEST mode, the Trading Member is helpless.

So on that basis they have assumed that and it is totally the Ex-employee's private act and beyond the control of the Trading Member.

The Applicant's representative was asked whether their statement that the Ex-employee did this act in private capacity and beyond the control of the Applicant, does not amount to an admission by them that the transaction was done by the Ex - employee, and not by the Respondent, since if it was done by the Ex-employee, it would be through the Applicant's system. The Applicant's representative denied it. He said it was Respondent's contention that it was done by Ex-employee.

The Applicant's representative was asked about the nature of the transaction for which there was a police complaint and case filed before the Jammu Civil Court against their employee [REDACTED]. The Applicant's representative said the transaction related to shares transmission from client's account. They had taken immediate action against the ex-employee and suspended him. A client named [REDACTED] had filed the complaint against [REDACTED]. The case is going on in the Jammu Civil Court, and Mr. Paramjeet Singh , on the basis of criminal complaints is in prison. His services have been terminated by the Applicant.

The Respondent was asked whether , they had given a police complaint ,when they came to know that the shares had been fraudulently transferred by [REDACTED]. They had approached the cyber crime department but were told that this case was beyond their scope, and the Trading Member had not done due diligence in checking the Profile Request Form, and the Respondent should go to the Applicant.

The Applicant's representative initially said there was a reference from cyber crime department to which they had replied with documents. When the Respondent reiterated the stand of the cyber crime department when he had approached them, the Applicant's representative corrected himself and said his reply related to another case.

Submissions by the Respondent.

██████████, on behalf of his father-in-law, ██████████, made the following submissions.

They had not submitted any Profile Change Request. On 6th June 2022, and his father-in-law's profile was updated without his authorization. Despite the signature mismatch and the email mismatch, the form was approved. The form should have been rejected outright.

Regarding the delay in making the complaint, when they filed their Income-tax return in May 2023 for the Assessment Year 2023-2024, it came to their knowledge through the Annual Information Statement that 6125 shares of NHPC had been transferred as gift/donation to one ██████████. ██████████ was the Applicant's ex-employee, he was serving as Manager in their Jammu branch.

The signature on the form (Profile Change Request) was approved within two days, without seeing the signature mismatch.

When it was pointed out that it was only a one-page form, and they may claim that they are offering quick service, the Respondent's representative said when they visited their branch and saw that their mobile number and email id were changed without their authorization, they filled the same form but they received the call from the Applicant's office only after one month.

The Respondent's representative referred to paragraph 2 of their Statement of Defence, wherein he had stated that his father-in-law thought his 6125 shares of NHPC resided with Karvy Stock Broker Limited, and that Karvy Stock Broker had been banned by SEBI in 2023. They had come to know from the Annual Information Statement that the shares had been gifted. His father-in-law tried to find out his shares but couldn't. It was only in June 2024 when visiting Reliance Securities Ltd Jammu branch to enquire about his shares of J&K Bank that are with them, he came to know that his shares of NHPC were transferred from this account only.

He was asked why they had not lodged the complaint in 2023 itself to the Applicant, when they came to know that the shares had been transferred, as per their statement, without their consent. Normal reaction would be to first go to the Trading Member, if some unauthorized transaction was noticed in May 2023.

The Respondent's representative replied that his father-in-law had shares of Jammu and Kashmir Bank Ltd, with the Applicant, and they thought that the NHPC shares were with Karvy Stock Brokers Ltd.

He was asked the reason for the delay of one year in complaining with the Trading Member.

The Respondent's representative said they had an 'Acknowledgment slip for bidder' of NHPC shares with Karvy Stock Broker Ltd stamp on it. They thought that the shares were with Karvy Stock Broker Ltd. Then one [REDACTED] told them the shares are not with Karvy Stock Broker Ltd. As stated earlier, only in 2024 when they went to enquire about shares of Jammu and Kashmir Bank, they came to know that the shares of NHPC were transferred through the demat account with the Applicant.

When he was asked whether the Respondent had a trading account with Karvy Stock Broker Ltd, in addition to the trading account with [REDACTED] he was not able to give a clear answer. He said the shares were applied during the IPO and the Respondent was serving in NHPC. They were told that the trading accounts of [REDACTED] were distributed to various stock brokers and the Respondent did not know that the shares of NHPC came to [REDACTED].

The Respondent's representative's attention was drawn to the contention of the Applicant that as per the Client Broker agreement, the Client was bound to inform, in writing, any changes in the information provided in the 'client registration form' provided by the client to the stockbroker at the time of opening the account or at any time thereafter'. If the Respondent had informed the correct mobile number which was operational, the Applicant would have sent the SMS on 06.06.2022 to that number, and if the Profile Request had not been generated by the Respondent, the matter would have immediately come to light.

The Respondent's representative said his father-in-law had discontinued the use of the primary mobile phone in 2010. He has provided a secondary number and they should have communicated on that number.

The Respondent's representative's attention was drawn to the Applicant's statement that it is the practice to send communications only to the primary number.

When asked on what basis they are asking for compensation at the average of 52 weeks highest and lowest closing rates, he said their demand was 6125 shares. Whatever be the rate, they should be able to buy 6125 shares. When the Conciliator asked if there was any alternative, then they said the average value of 52-week high and low rates should be given. The primary concern was that the amount given to them should be sufficient for buying 6125 shares of NHPC.

In addition, dividend of Rs.4.25 paise per share, given in 2022 should also be given.

OBSERVATIONS AND FINDINGS:

Taking into consideration the submissions made by the Applicant in their Statement of Claim, and the submissions made by the Respondent in his Statement of Case, and the submissions made by the parties at the hearing held on January 16, 2025, the following points emerge :

1. The Applicant has cited the Respondent's omission to inform about the non-operative status of the registered mobile number since 2010 as the main reason for the issue to have arisen. If the Respondent had mentioned that the mobile number was not in operation, then the SMS sent on 06.06.2022 would have been sent to the mobile number that was functioning, and the Respondent could have taken up the matter with the Applicant if he had not initiated the Profile Change Request.

It was the duty of the Respondent, as per clauses in the Client Broker Agreements signed by the Respondent, to inform the Applicant about any changes in the information in the 'client registration form' provided at the time of opening the account.

However, considering the fact that the nature of the transaction of gifting of the shares of NHPC from the demat account of the Respondent was an unauthorized transaction, carried out by [REDACTED], the then Manager of the Jammu branch of the Applicant, it is a moot point whether this would have made any difference.

2. The Applicant has stated that the comparison of signatures on the Profile Change Request form with the Account opening form is beyond the purview of the Conciliator. If the difference in signatures is apparent on the face of it, as in the instant case, perhaps comparison by forensic experts may not be necessary.

3. The Applicant has mentioned about the delay in approaching the Applicant - while the Respondent came to know of the unauthorized gifting of the shares in May 2023, they approached the Applicant only in June 2024.

The Respondent has stated that they thought the shares were with Karvy Stock Brokers Ltd as the acknowledgement had been issued by them at the time of the IPO in 2009. Since Karvy Stock Brokers Ltd had been banned by SEBI in 2023, they came to know that Karvy had distributed their trading accounts to other stock brokers. It was when they visited the office of the Applicant to enquire about their shares of Jammu & Kashmir Bank Ltd, that they came to know that the shares of NHPC had been with the Applicant.

4. The Respondent, in their Statement of Claim, under Grounds of Arbitration, have stated, inter alia, that ignorance about the SMS dated 06.06.2022, and not filing the complaint in 2023 itself (when they came to know of the gift-transaction) appears to be a private arrangement between the Ex-employee and the Complainant.

If indeed it was a private arrangement, why should the Respondent file the complaint in 2024.

4. The Applicant has also stated that the Ex-employee did this act in a private capacity and beyond the control of the Applicant. Earlier the Applicant has alleged it is a private arrangement between the Respondent and the Ex-employee. Here the Applicant states the Ex-employee has acted in his private capacity and beyond the control of the Applicant.

The employer has vicarious liability for the acts of his employees, and the employee in question here is the Manager of their Jammu Branch

5. The Applicant has received the same type of complaint, against [REDACTED], involving the unauthorized transfer of shares, from Jammu Police

on the basis of the complaint filed by a client. The case file is before the Jammu Civil Court.

██████████ services have been suspended and later terminated. At the hearing, the Tribunal was informed that he had been imprisoned.

6. It seems apparent that the transaction of the transfer of shares by way of gift from the Demat account of the Respondent to the Demat account of ██████████ was done by ██████████ fraudulently.

7. The Applicant has put up a defence citing lapses on the part of the Respondent., denying any compensation or restoration of the shares.

Even when the complaint was filed by the Respondent in June 2024, they do not seem to have taken action to resolve the issue and the Respondent had to file the complaint through ██████████ of SEBI. At the same time, they have come out with a proposal to amicably solve the issue. It is a matter for speculation whether this amounts to a tacit admission on the part of the Applicant. The client is a senior citizen and has been the victim of a fraudulent transaction where the person who carried out the transaction is himself the beneficiary. Restoration of the 6125 shares and the dividend for the period from 08.6.2022 would be a fair recompense.

AWARD

- i. The Applicant is to restore 6125 equity shares of NHPC Limited to the Respondent's demat account.
- ii. The Applicant is to pay the dividend on the above shares from 8.6.2022 till date.
- iii The Order dated September 02, 2024, of the Ld. The conciliator is set aside.
- iv. No order as to costs.

██████████
Sole Arbitrator

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